

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:15-CV-08863 (VEB)

SHARON JOSEPHINE RUBIN,

Plaintiff,

vs.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In October of 2011, Plaintiff Sharon Josephine Rubin applied for Disability Insurance benefits under the Social Security Act. The Commissioner of Social Security denied the application.¹

¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorneys, California Lawyers Group, LLP,
2 Michael S. Brown, Esq., of counsel, commenced this action seeking judicial review
3 of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383
4 (c)(3).

5 The parties consented to the jurisdiction of a United States Magistrate Judge.
6 (Docket No. 4, 15). On October 25, 2017, this case was referred to the undersigned
7 pursuant to General Order 05-07. (Docket No. 23).

8 9 **II. BACKGROUND**

10 Plaintiff applied for Disability Insurance benefits on October 27, 2011,
11 alleging disability beginning August 15, 2009. (T at 163-66).² The application was
12 denied initially and on reconsideration. Plaintiff requested a hearing before an
13 Administrative Law Judge ("ALJ").

14 On February 7, 2014, a hearing was held before ALJ Marti Kirby. (T at 40).
15 Plaintiff appeared with an attorney and testified. (T at 44-54). The ALJ also
16 received testimony from David Rinehart, a vocational expert. (T at 54-57).

17 On March 17, 2014, the ALJ issued a written decision denying the application
18 for benefits. (T at 18-39). The ALJ's decision became the Commissioner's final

19 ² Citations to ("T") refer to the administrative record at Docket No. 19.

1 decision on September 16, 2015, when the Appeals Council denied Plaintiff's
2 request for review. (T at 1-6).

3 On November 13, 2015, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.
5 1). The Commissioner interposed an Answer on July 12, 2017. (Docket No. 18).
6 The parties filed a Joint Stipulation on October 18, 2017. (Docket No. 22).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,
8 this Court finds that the Commissioner's decision must be affirmed and this case be
9 dismissed.

10 **III. DISCUSSION**

11 **A. Sequential Evaluation Process**

12 The Social Security Act ("the Act") defines disability as the "inability to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which has
15 lasted or can be expected to last for a continuous period of not less than twelve
16 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
17 claimant shall be determined to be under a disability only if any impairments are of
18 such severity that he or she is not only unable to do previous work but cannot,
19 considering his or her age, education and work experiences, engage in any other

1 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
2 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
3 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
6 one determines if the person is engaged in substantial gainful activities. If so,
7 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
8 decision maker proceeds to step two, which determines whether the claimant has a
9 medically severe impairment or combination of impairments. 20 C.F.R. §§
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

11 If the claimant does not have a severe impairment or combination of
12 impairments, the disability claim is denied. If the impairment is severe, the
13 evaluation proceeds to the third step, which compares the claimant's impairment(s)
14 with a number of listed impairments acknowledged by the Commissioner to be so
15 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
16 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
17 equals one of the listed impairments, the claimant is conclusively presumed to be
18 disabled. If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to the fourth step, which determines whether the impairment

1 prevents the claimant from performing work which was performed in the past. If the
2 claimant is able to perform previous work, he or she is deemed not disabled. 20
3 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual
4 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
5 work, the fifth and final step in the process determines whether he or she is able to
6 perform other work in the national economy in view of his or her residual functional
7 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon the claimant to establish a *prima facie*
10 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
11 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
12 is met once the claimant establishes that a mental or physical impairment prevents
13 the performance of previous work. The burden then shifts, at step five, to the
14 Commissioner to show that (1) plaintiff can perform other substantial gainful
15 activity and (2) a "significant number of jobs exist in the national economy" that the
16 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

17 **B. Standard of Review**

18 Congress has provided a limited scope of judicial review of a Commissioner's
19 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision,
20

1 made through an ALJ, when the determination is not based on legal error and is
2 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
3 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

4 “The [Commissioner’s] determination that a plaintiff is not disabled will be
5 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
6 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
7 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
8 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
9 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
11 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
12 conclusions as the [Commissioner] may reasonably draw from the evidence” will
13 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
14 the Court considers the record as a whole, not just the evidence supporting the
15 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
16 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

17 It is the role of the Commissioner, not this Court, to resolve conflicts in
18 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
19 interpretation, the Court may not substitute its judgment for that of the

Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or non-disability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

C. Commissioner's Decision

The ALJ determined that Plaintiff met the insured status requirements of the Social Security Act through December 31, 2012 (the “date last insured”). (T at 23). The ALJ found that Plaintiff did not engage in substantial gainful activity during the period between the alleged onset date (August 15, 2009) and the date last insured. (T at 23).

The ALJ found that, as of the date last insured, Plaintiff's benign brain tumor on the left side, status post radiation; history of left breast cancer, status post-double mastectomy with revision multiple surgeries with complications; headaches; and depression were “severe” impairments under the Act. (Tr. 23).

1 However, the ALJ concluded that, as of the date last insured, Plaintiff did not
2 have an impairment or combination of impairments that met or medically equaled
3 one of the impairments set forth in the Listings. (T at 24).

4 The ALJ determined that, as of the date last insured, Plaintiff retained the
5 residual functional capacity (“RFC”) to perform light work, as defined in 20 CFR §
6 404.1567 (b), with the following limitations: she can stand/walk for 6 hours in an 8-
7 hour workday, but no more than 15-20 minutes at a time; she can sit for 6 hours in
8 an 8-hour workday, with brief position changes after one hour; she can occasionally
9 bend, stoop, climb steps, and balance, but rarely kneel, crawl, squat or crouch; she
10 cannot climb ladders, ropes, or scaffolds; she must avoid work that requires
11 unprotected heights, moving machinery, or other hazards; she is to avoid jobs that
12 require hypervigilance or intense concentration on a particular task; she is limited to
13 occasional, non-intense interaction with the general public; she is limited to
14 unskilled work; she cannot perform repetitive or constant pushing or pulling with the
15 left lower extremity. (T at 26).

16 The ALJ concluded that, as of the date last insured, Plaintiff could not
17 perform her past relevant work as a retail cashier, bank auditor, or cafeteria manager.
18 (T at 33-34). However, considering Plaintiff’s age (53 years old on the date last
19 insured), education (at least high school), work experience, and residual functional

1 capacity, the ALJ found that jobs exist in significant numbers in the national
2 economy that Plaintiff could perform as of the date last insured. (T at 34-35).

3 Accordingly, the ALJ determined that Plaintiff was not disabled within the
4 meaning of the Social Security Act between August 15, 2009 (the alleged onset date)
5 and December 31, 2012 (the date last insured) and was therefore not entitled to
6 benefits. (T at 35). As noted above, the ALJ's decision became the Commissioner's
7 final decision when the Appeals Council denied Plaintiff's request for review. (T at
8 1-6).

9 **D. Disputed Issues**

10 As set forth in the Joint Stipulation, Plaintiff offers two (2) main arguments in
11 support of her claim that the Commissioner's decision should be reversed. First, she
12 challenges the ALJ's credibility determination. Second, Plaintiff asserts that the
13 ALJ's step five analysis was flawed. This Court will address both arguments in turn.
14

15 **IV. ANALYSIS**

16 **A. Credibility**

17 A claimant's subjective complaints concerning his or her limitations are an
18 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
19 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
20

1 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
2 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
3 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
4 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
5 findings are insufficient: rather the ALJ must identify what testimony is not credible
6 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
7 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

8 However, subjective symptomatology by itself cannot be the basis for a
9 finding of disability. A claimant must present medical evidence or findings that the
10 existence of an underlying condition could reasonably be expected to produce the
11 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
12 § 404.1529(b), 416.929; SSR 96-7p.

13 In this case, Plaintiff testified as follows: She was 54 years old as of the date
14 of the administrative hearing. (T at 44). She completed high school, attended some
15 college, and received a fashion merchandising certification from a vocational school.
16 (T at 44). She last worked in 2007. (T at 44). She was diagnosed with breast cancer
17 in 2009 and underwent surgery, with no follow-up chemotherapy or radiation. (T at
18 46). A brain tumor diagnosed in 2006 was treated with radiation. (T at 46). She
19
20

1 does not drive due to dizzy spells. (T at 48). Anti-depressants provide some relief.
2 (T at 49). She is married and lives with her husband. (T at 49).

3 She stays at home most of the day. (T at 50). Exercise has been
4 recommended, but she avoids it due to pain in her leg and hip. (T at 50). She
5 watches television for hours at a time, but does not pay close attention. (T at 50).
6 She sees one of her granddaughters often and will read to her and “help her with her
7 ABCs and ... counting.” (T at 51). Her husband attends to household chores. (T at
8 51). Irritability and mood control are struggles. (T at 51). Medication side effects
9 include bone pain, nervousness, and depression. (T at 52). She can stand
10 comfortably for about 5 to 7 minutes. (T at 53). Her doctor prescribed a cane. (T at
11 53).

12 The ALJ concluded that Plaintiff’s medically determinable impairments could
13 reasonably be expected to cause the alleged symptoms, but that her statements
14 regarding the intensity, persistence, and limiting effects of the symptoms were not
15 fully credible. (T at 28). The ALJ found that Plaintiff’s mental and/or emotional
16 issues precluded her from some work settings, but did not render her wholly
17 incapable of sustaining any and all work activity. (T at 26).

18 Plaintiff challenges the ALJ’s decision to discount her subjective complaints
19 of disabling mental and emotional issues.

1 For the reasons that follow, this Court finds the ALJ's decision consistent with
2 applicable law and supported by substantial evidence. No treating or examining
3 medical source assessed Plaintiff with mental functioning limitations of the degree
4 she alleged.

5 In addition, the ALJ reasonably concluded that the treatment record, while
6 certainly documenting complaints of mental health symptoms, was not consistent
7 with Plaintiff's claims of disabling limitations. In February of 2011, Pamela Jill
8 Gordon, a marriage and family therapist, diagnosed Plaintiff with adjustment
9 disorder with mixed anxiety and depressed mood. (T at 972). She assigned a Global
10 Assessment of Functioning ("GAF") score³ of 65 (T at 972). "A GAF of 61-70
11 indicates '[s]ome mild symptoms (e.g., depressed mood and mild insomnia) or some
12 difficulty in social, occupational, or school functioning (e.g., occasional truancy, or
13 theft within the household), but generally functioning pretty well, has some
14 meaningful interpersonal relationships.'" *Tagger v. Astrue*, 536 F. Supp. 2d 1170,
15 1174 n.8 (C.D. Cal. 2008). Subsequent treatment notes were generally negative for
16 significant symptoms, with judgment, affect, and memory noted as normal. (T at
17 979, 1056, 1091, 1146).

18 ³ "A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment." *Vargas v. Lambert*, 159 F.3d 1161,
20 1164 n.2 (9th Cir. 1998).

1 In February of 2012, Dr. William Goldsmith performed a consultative
2 psychiatric examination. He diagnosed physical condition affecting psychological
3 function and anxiety not otherwise specified. (T at 1656). Dr. Goldsmith assigned a
4 GAF score of 55 (T at 1656), which is indicative of moderate symptoms or difficulty
5 in social, occupational or educational functioning. *Metcalfe v. Astrue*, No. EDCV
6 07-1039, 2008 US. Dist. LEXIS 83095, at *9 (C.D. Cal. Sep't 29, 2008). He
7 assessed slight impairment with regard to Plaintiff's ability to
8 understand/remember/carry-out simple 1 or 2 step job instructions and her ability
9 maintain concentration, attention, persistence and pace. (T at 1656). He found
10 moderate impairment with respect to Plaintiff's ability to follow detailed and
11 complex instructions, interact with the public/supervisors/co-workers, and adapt to
12 the stresses common to a normal work environment. (T at 1656). Dr. Goldsmith
13 opined that Plaintiff's ability to maintain regular activities in the work place and
14 perform work activities on a consistent basis was intact, along with her ability to
15 perform work activities without special or additional supervision. (T at 1656-66).
16 He characterized Plaintiff's prognosis as "fair to good." (T at 1657).

17 In May of 2012, Dr. Gerald Fischbach, a psychiatrist, reported on an initial
18 intake visit with Plaintiff. Dr. Fischbach performed a mental status examination,
19 describing Plaintiff as having intact attention and concentration, intact memory,

1 irritable and moderately depressed mood, coherent thought processes, and seemingly
2 intact judgment and insight. (T at 1721-22). He diagnosed adjustment disorder with
3 mixed anxiety and depressed mood. (T at 1722). Dr. Fischbach assigned a GAF
4 score of 50-55. (T at 1723). He adjusted Plaintiff's medication and recommended
5 follow-up psychiatric treatment. (T at 1723-24).

6 In light of the foregoing, this Court finds that the ALJ's conclusion that the
7 medical record did not support the full extent of Plaintiff's subjective complaints is
8 supported by substantial evidence. Although lack of supporting medical evidence
9 cannot form the sole basis for discounting pain testimony, it is a factor the ALJ may
10 consider when analyzing credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir.
11 2005). In other words, an ALJ may properly discount subjective complaints where,
12 as here, they are inconsistent with the medical records. *Carmickle v. Comm'r of Soc.*
13 *Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d
14 947, 958-59 (9th Cir. 2002).

15 In addition, the ALJ noted that Plaintiff did not seek consistent mental health
16 treatment or pursue more aggressive treatment options. (T at 28). The voluminous
17 record testifies to Plaintiff's access to health care and her willingness to utilize the
18 medical system to address a variety of maladies. Thus, having demonstrated an
19 ability and willingness to access health care for symptoms that impacted her life, it is

1 reasonable to infer that the relatively conservative, limited nature of the mental
2 health treatment indicates relatively less significant mental health symptoms.
3 Although the lack of treatment cannot form the sole basis for rejecting claims of
4 disabling symptoms, an ALJ may consider a claimant's unexplained or inadequately
5 explained failure to seek treatment when assessing credibility. *Tommasetti v. Astrue*,
6 533 F.3d 1035, 1039 (9th Cir. 2008)(citation omitted).

7 Lastly, the ALJ reasonably noted that Plaintiff's activities of daily living
8 (which included household chores, babysitting her granddaughter, and attending to
9 self-care)(T at 25, 27, 51, 531, 967, 974) were inconsistent with her subjective
10 complaints. Although the claimant does not need to "vegetate in a dark room" to be
11 considered disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9th Cir. 1987), the ALJ
12 may discount a claimant's testimony to the extent his or her activities of daily living
13 "contradict claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d
14 1104, 1112-13 (9th Cir. 2011).

15 There is no question that Plaintiff's mental health symptoms impact her ability
16 to perform work-related activities. The issue is the extent of that impact. The ALJ
17 concluded that Plaintiff could perform work, provided it was unskilled, without any
18 hypervigilance or intense concentration, and involved only limited to occasional
19 non-intense interaction with the general public. (T at 26). This assessment is

1 supported by substantial evidence. The fact that Plaintiff offers an alternative
2 reading of the evidence in support of a more restrictive assessment is unavailing. It
3 is the role of the Commissioner, not this Court, to resolve conflicts in evidence.
4 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at
5 400. If the evidence supports more than one rational interpretation, this Court may
6 not substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d
7 577, 579 (9th 1984). If there is substantial evidence to support the administrative
8 findings, or if there is conflicting evidence that will support a finding of either
9 disability or nondisability, the Commissioner's finding is conclusive. *Sprague v.*
10 *Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was
11 supported by substantial evidence and must therefore be sustained. *See Tackett v.*
12 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably
13 supports the Commissioner's decision, the reviewing court must uphold the decision
14 and may not substitute its own judgment).

15 **B. Step Five Analysis**

16 At step five of the sequential evaluation, the burden is on the Commissioner to
17 show that (1) the claimant can perform other substantial gainful activity and (2) a
18 "significant number of jobs exist in the national economy" which the claimant can
19 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant cannot

1 return to her previous job, the Commissioner must identify specific jobs existing in
2 substantial numbers in the national economy that the claimant can perform. See
3 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995).

4 The Commissioner may carry this burden by “eliciting the testimony of a
5 vocational expert in response to a hypothetical that sets out all the limitations and
6 restrictions of the claimant.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995).
7 The ALJ's depiction of the claimant's disability must be accurate, detailed, and
8 supported by the medical record. *Gamer v. Secretary of Health and Human Servs.*,
9 815 F.2d 1275, 1279 (9th Cir.1987). “If the assumptions in the hypothetical are not
10 supported by the record, the opinion of the vocational expert that claimant has a
11 residual working capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d
12 1450, 1456 (9th Cir. 1984).

13 Here, the ALJ relied on the testimony of the vocational expert in concluding
14 that there were jobs that existed in significant numbers in the national economy that
15 Plaintiff could perform as of the date last insured. (T at 34-35). Plaintiff challenges
16 the hypothetical presented to the vocational expert. The ALJ asked the vocational
17 expert about a hypothetical claimant who could not perform “jobs requiring hyper-
18 vigilance or intense concentration on a particular task.” (T at 55). The ALJ further
19 explained that she meant “jobs where the very nature of the job would mean the

1 person can't be off task for even the shortest amount of time” (T at 55). The
2 ALJ also included a limitation to “unskilled work.” (T at 56). Plaintiff argues that
3 this phrasing does not adequately convey to the vocational expert that Plaintiff had
4 moderate limitations with regard to maintaining concentration, persistence, and pace.

5 Plaintiff cites *Brink v. Comm'r Soc. Sec. Admin.*, 343 Fed. App'x 211, 212 (9th
6 Cir. 2009), in support of her argument. In *Brink*, the ALJ found that the claimant
7 had moderate difficulty maintaining concentration, persistence, or pace, but the
8 hypothetical presented to the vocational expert referenced only “simple, repetitive
9 work.” *Id.* In an unpublished, non-precedential opinion, a panel of the Ninth Circuit
10 reversed and determined that the limitation to simple, repetitive work did not
11 adequately address the claimant's limitations with regard to concentration,
12 persistence and pace. *Id.*

13 This case is distinguishable from *Brink*. In this case, the ALJ carefully
14 considered the evidence, including the evidence of limitation regarding
15 concentration, persistence, and pace, and found that an RFC limiting Plaintiff to
16 unskilled jobs, with no hypervigilance or intense concentration, adequately
17 incorporated those limitations. This conclusion was supported by substantial
18 evidence for the reasons outlined above.

1 In sum, consistent with substantial evidence, the ALJ properly translated
2 Plaintiff's moderate limitations into the RFC and then presented those translated
3 limitations to the vocational expert as part of the hypothetical question. This was
4 sufficient under applicable case law in the Ninth Circuit. *See Stubbs-Danielson v.*
5 *Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (finding that RFC limiting a claimant to
6 simple, repetitive work "adequately captures restrictions related to concentration,
7 persistence, or pace where the assessment is consistent with the restrictions
8 identified in the medical testimony."); *see also Watkins v. Comm'r SSA*, No. 6:15-cv-
9 01539, 2016 U.S. Dist. LEXIS 112555, at *14 (D. Or. Aug. 22, 2016)(distinguishing
10 *Brink* on this basis); *Murray v. Colvin*, No. C-13-01182 DMR, 2014 U.S. Dist.
11 LEXIS 50586, 2014 WL 1396408, at *4 (N.D. Cal. Apr. 10, 2014) (finding that
12 *Brink* did not apply because "[h]ere, the medical evidence supports a finding that
13 Plaintiff is capable of performing one-to-two step instructions despite any limitations
14 in concentration, persistence or pace"); *Maidlow v. Astrue*, No. EDCV 10-01970-
15 MAN, 2011 U.S. Dist. LEXIS 128050, 2011 WL 5295059, at *4 (C.D. Cal. Nov. 2,
16 2011) ("However, in this case, unlike the cases cited by plaintiff, and as detailed
17 below, the medical expert, upon whom the ALJ relied both in determining plaintiff's
18 RFC and crafting her hypothetical to the vocational expert, testified that plaintiff's

1 deficiencies in CPP resulted in specific work restrictions—to wit, a restriction to
2 simple, repetitive work.”).

3 4 5 **V. CONCLUSION**

6 After carefully reviewing the administrative record, this Court finds
7 substantial evidence supports the Commissioner’s decision, including the objective
8 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly
9 examined the record, afforded appropriate weight to the medical evidence, including
10 the assessments of the treating and examining medical providers and medical
11 experts, and afforded the subjective claims of symptoms and limitations an
12 appropriate weight when rendering a decision that Plaintiff is not disabled. This
13 Court finds no reversible error and because substantial evidence supports the
14 Commissioner’s decision, the Commissioner is GRANTED summary judgment and
15 that Plaintiff’s motion for judgment summary judgment is DENIED.

1 **VI. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered AFFIRMING the Commissioner's decision and
4 DISMISSING this action, and it is further ORDERED that

5 The Clerk of the Court shall file this Decision and Order, serve copies upon
6 counsel for the parties, and CLOSE this case.

7 DATED this 7th day of March, 2018

8 /s/Victor E. Bianchini
9 VICTOR E. BIANCHINI
UNITED STATES MAGISTRATE JUDGE